

ANALYSIS OF ORIGINAL BILL

Author: Revenue and Taxation Committee Analyst: Victoria Favorito Bill Number: SB 1043
Related Bills: None Telephone: 845-3825 Introduced Date: March 14, 2007
Attorney: Patrick Kusiak Sponsor: Franchise Tax Board

SUBJECT: Confidentiality Of Settlement Negotiations

SUMMARY

This Franchise Tax Board (FTB) sponsored bill would exclude evidence of settlement negotiations in all administrative civil tax dispute forums in California.

PURPOSE OF THE BILL

The purpose of this FTB-sponsored bill is to eliminate the concern that statements made during settlement negotiations by either taxpayers or FTB staff may be used by one party against the other in subsequent administrative proceedings, which would make the settlement process less effective.

EFFECTIVE/OPERATIVE DATE

This bill would become effective January 1, 2008, and by its terms would be operative to any settlements approved on or after the date of enactment, without regard to a taxable year.

POSITION

Support.

On December 4, 2006, the Franchise Tax Board voted 2-0 to support the language in this bill.

ANALYSISFEDERAL/STATE LAWCurrent Federal Law

Under Rule 408 of the federal Rules of Evidence, an offer of compromise or an attempt to compromise a disputed claim is not admissible to prove liability for or invalidity of the claim or its amount. In addition, federal law prohibits a party in an alternative dispute resolution proceeding from disclosing any dispute resolution communication (5 USC § 574).

Board Position:

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<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input type="checkbox"/> PENDING

Department Director

Date

Selvi Stanislaus

4/24/07

by Lynette Iwafuchi

Current State Law

Under Evidence Code section 1152, settlement offers and offers of compromise made by a party in a civil lawsuit are inadmissible in court proceedings to prove such party's liability for loss or damage. Similarly, under Government Code section 11415.60, settlements, settlement offers, and statements made in settlement negotiations between an "agency" and a party are inadmissible in any adjudicative proceeding or civil action to prove liability, except to the extent provided in Evidence Code section 1152; however, appeals heard by the State Board of Equalization (BOE) are exempt from these provisions of the Administrative Procedure Act.

THIS BILL

This FTB-sponsored bill would add a specific provision to the Revenue and Taxation Code prohibiting the admissibility of either any settlement offers or any statements or conduct made in pursuit of settlement from being used as evidence in any subsequent adjudicative proceeding.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would not significantly impact the department's programs and operations.

TECHNICAL CONSIDERATIONS

The language of the bill contains unnecessary statutory references that cover ways to appeal to the BOE and may arguably be incomplete. This could lead to disputes with taxpayers and would complicate the administration of this bill. Amendment 1 would eliminate the unnecessary language.

The operative date provisions of this bill, indicating that the provisions are operative with respect to settlements "approved" on or after the date of enactment, are incompatible with the actual evidentiary rule in the bill. Settlement negotiations do not always result in an approved settlement, but such negotiations should still be subject to the evidentiary rule. Amendment 2 will resolve the inconsistency.

PROGRAM BACKGROUND

Legislation was adopted in 1992 specifically authorizing FTB to settle administrative civil tax disputes. The program is voluntary. Successful settlement negotiations eliminate the hazards and risks of further litigation, which is a benefit to both the taxpayer and the state. The settlement program has collected in excess of \$8.69 billion dollars since its inception. To ensure the success of the program, it is necessary to follow the longstanding public policy in California favoring laws excluding any aspect of settlement negotiations as evidence in subsequent adjudicative proceedings.

OTHER STATES' INFORMATION

Because laws excluding settlement negotiations as evidence in subsequent adjudicative proceedings are a matter of longstanding evidence law in California, a comparison of tax adjudication laws of other states would have little bearing.

FISCAL IMPACT

No departmental costs are associated with this proposal.

ECONOMIC IMPACT

This bill would not impact the state's income tax revenue.

LEGISLATIVE STAFF CONTACT

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO SB 1043
As Introduced March 14, 2007

AMENDMENT 1

On page 4, lines 32 and 33, strikeout "pursuant to Section 19045, 19085, or 19324"

AMENDMENT 2

On page 5, line 19, strikeout "settlements approved" and insert:
settlement negotiations entered into